



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

KENNETH MAURICE WIGFALL, §
Petitioner, §
§
vs. § C.A. NO. 2:06-CV-1750-HFF-RSC
§
STAN BURTT, Warden, and HENRY §
MCMASTER, Attorney General for South §
Carolina, §
Respondents. §

ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE MAGISTRATE JUDGE

This case was filed as a 26 U.S.C. § 2254 action. Petitioner is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Respondents' motion for summary judgment be granted. The Report is made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on October 16, 2006. In a motion entered by the Clerk of Court on October 23, 2006, Petitioner requested 1) an extension of time to file his objections and 2) a copy of four cases that he asserted were not in the law library at Lieber Correctional Institution. By Order filed on October 30, 2006, the Court granted Petitioner additional time to file his objections and provided copies of the cases that Petitioner requested.

Petitioner's objections were entered by the Clerk of Court on November 17, 2006. The Court has carefully reviewed Petitioner's objections but finds them to be without merit. Simply stated, and as observed by the Magistrate Judge in the comprehensive and well-reasoned Report, 1) Petitioner's first ground for relief is rejected because of the deference this Court must accord to the state court pursuant to the Antiterrorism and Effective Death Penalty Act and 2) Petitioner's second ground for relief must be rejected because it is procedurally barred from consideration and Petitioner has failed to overcome the default. Therefore, the Court will enter judgment accordingly.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Petitioner's objections, adopts the Report, and incorporates it herein. Therefore, it is the judgment of this Court that Respondents' motion for summary judgment be **GRANTED**. Thus, Petitioner's motion for an evidentiary hearing is rendered **MOOT**.

IT IS SO ORDERED.

Signed this 28th day of December, 2006, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified of the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.